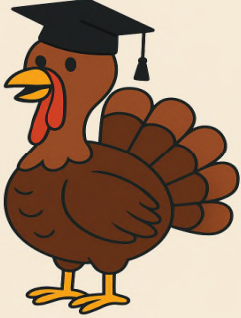


**HOT TOPICS**



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**Keep These in Mind...**

“Sexual Harassment” Redefined

New definitions of sex and gender

Equal standards for discrimination cases

New AI regulations for employers

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**USERRA**



- Uniform Services Employment and Reemployment Rights Act of 1994
- Prohibits discrimination against veterans based on past, present, and future military service
- Helps ensure veterans are quickly reemployed in their civilian jobs
- Protects both public and private employers and covers voluntary and involuntary service

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**FMLA Exigency Leave**

- Immediate family of active duty members of armed forces (including national guard and reserves) entitled to leave for qualifying exigencies:
  - Short-notice deployment
    - Notified in 7 or less calendar days before deployment
  - Military events and related activities
  - Childcare needs
  - Extended leave period for care of covered service members



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**Since President Trump's Inauguration...**

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**DEI is Dead**

Multiple Executive Orders passed in 2025 that affect DEI policies



- Removed DEI programs and positions from federal agencies and contractors
- Instructed federal agencies to "deprioritize" investigating Disparate Impact claims
- Repealed prior EOs designed to promote DEI

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### Federal Changes about Sex and Gender

- President Trump’s executive orders redefine sex and gender and require the enforcement of laws based on biological sex
- Federal Court struck down EEOC enforcement guidelines that expanded definitions of sex and harassing conduct

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### State Changes about Sex and Gender

- Texas legislature passed House Bill 229 also addressing sex and gender
- Texas Bill went into effect September 1, 2025



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### What is Sexual Harassment Now?

Federal Court struck down EEOC’s previous expansion of definitions of sex and harassing conduct which included:

- denial of access to a bathroom or other sex-segregated facility consistent with [an] individual’s gender identity
- repeated and intentional use of a name or pronoun inconsistent with [an] individual’s known gender identity
- disclosure of an individual’s sexual orientation or gender identity without permission
- Sexual orientation and gender identity as types of discrimination based on sex

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### House Bill 229

- Defines man and woman strictly in line with biological sex
  - There's no longer a difference between 'female' and 'woman' or 'male' and 'man'
- Requires government entities to identify all individuals as male or female when collecting statistics information

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### What This Means

- Any information reported by state agencies (including appraisal districts) will have to align with new "male/female" definitions
  - hiring reports
  - unemployment filings
  - licensing data
- These changes do **NOT** override federal Title VII protections against discrimination based on gender identity or sexual orientation



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### Expect more Discrimination Suits from "the Majority"

- In August 2025, Supreme Court removed "extra hoops" that members of a "majority" class must jump through to prove discrimination
- Now follows equal standards used in "minority" discrimination cases
- Emphasized Title VII protects "any individual" from discrimination equally regardless of group membership

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## “Ban-the-Box” Still Growing



- Use of criminal convictions as exclusionary criteria may result in adverse impact against certain minority groups
- 37 states now have some variation of “Ban-the-Box” laws on the books for public sector and 15 have expanded to private sectors
- Texas proposed similar state-wide law in 2025 but failed to pass it

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## AI Discriminates

- Courts look into whether AI used to weed out “unqualified candidates” for jobs is discriminatory
- Texas Responsible Artificial Intelligence Governance Act
  - Prohibits use of AI to intentionally discriminate against a protected class
  - Disparate impact is NOT sufficient to show intent to discriminate
- Other states still prohibit discrimination from disparate impact



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Don't run afoot with these employment laws



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### New FLSA Standard of Proof

- Supreme Court made it easier for employers to prove an individual was an independent contractor or that an employee was exempt from FLSA’s minimum wage and overtime pay provisions
- Now the “preponderance of the evidence” standard
- It’s “more likely than not” that the employee is exempt




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### Independent Contractor Test

- Supreme Court relies on Economic Reality Test
- Not an Independent Contractor if they are “as a matter of economic reality, economically dependent on an employer for work”



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### Are you an Independent Contractor?

1. Degree of control
2. Opportunity for profit or loss
  - Determined by their own skill or not?
3. Worker’s investment in tools, equipment, etc.
  - Are they reimbursed?
4. Skill and initiative required to perform job
5. Permanency of relationship
6. Integrality of work
  - Is work performed integral part of employer’s business?

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## Fair Labor Standards Act Exempt vs. Non-Exempt Employees

- Exempt: Not entitled to overtime (e.g., executives (supervisors), professionals (4-yr. degree), and administrative (not clerical)) and earn minimum salary
- Non-Exempt: Everyone else entitled to overtime pay (or comp time) calculated at 1 1/2 hours for each hour worked over 40 hours in a workweek



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## Are You Exempt?

- Tests for exemption:
  - salary basis
  - duties test
- What is your minimum weekly salary?
- What are your job duties?



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## Executive Exemptions

- Weekly salary is not less than \$684.00, without adjustment
- Primary duties include
  - Managing enterprise or
  - Managing department or subdivision of enterprise
- Regularly direct work of 2+ other full-time employees
- Authority to hire/fire employees or opinion on subject carries weight



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### Administrative Exemptions

- Weekly salary is not less than \$684.00
- Primary duties include
  - Office or non-manual work
  - General business operations of employer or customers, but not the business of the company
- Have discretion to use independent judgment on important matters



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### Professional Exemptions

- Weekly salary is not less than \$684.00
- Four-year college degree
- Primary duties
  - Work requiring advanced knowledge; predominantly intellectual work **OR**
  - Work in invention, imagination, originality, or talent
- In field of science or learning with prolonged education **OR** recognized artistic and creative fields



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### PWFA Affirmed in Texas

- In August 2025 the Fifth Circuit Court of Appeals declared the Pregnant Workers Fairness Act constitutional and removed the permanent injunction that has been placed against it in Texas
- The PWFA is now fully enforceable against the state of Texas and its employers



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### KEY PROVISIONS

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Requires **reasonable accommodations** for qualified employees

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Applies to all **PUBLIC and private employers with 15+ employees**

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Employees must be able to **perform the essential functions** of their job with accommodation

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Examples of Accommodations: more frequent breaks, modified equipment, light duty, schedule flexibility

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### AREAS OF OVERLAP BETWEEN ADA AND FMLA

- Medical Conditions: A condition may qualify under both laws.
- Employer Obligation: Both may require leave and accommodations
- Job Protection: FMLA guarantees job-protected leave up to 12 weeks; ADA may extend leave or require reasonable accommodations upon return (which may include more time off, but there is no federal job-protected leave)

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### DIFFERENCES

Feature	ADA	FMLA
Paid Leave	No	No
Leave Duration	No fixed limit	Up to 12 weeks/year (rolling 12-months)
Employer Size	15+ (all Public)	50+ (all Public)
Applies to	Qualified Individuals with a disability	Employees with serious health condition or caregiving needs for immediate family
Job Protection	No	Yes

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## FMLA Leave

For a standard 40 hour average week (5 8-hour days) an employee is entitled to:

12 weeks=60 days

12 weeks = 480 hours

12 weeks =28,800 minutes

Calculated by multiplying 12 (weeks) by 40 to get number of hours entitled to.

Can be taken intermittently. Remember, time starts over every 12 months.

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## Other Schedules

For **50 hour** average week

12(weeks) x 50 (hours)

12 weeks = 600 hours

12 weeks = 36,000 minutes

For **35 hour** average week

12(weeks) x 35 (hours)

12 weeks = 420 hours

12 weeks = 25,200 minutes



Take the time to get this right and share frequently with the employee

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ANY  
QUESTIONS  
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